

**MINUTES OF THE MILLVILLE  
TOWN COUNCIL MEETING  
April 9, 2019 @ 7:00 PM**

In attendance were Mayor Bob Gordon, Deputy Mayor Steve Maneri, Treasurer Peter Michel, Secretary Ronald Belinko, Council Member Sharon Brienza, Town Solicitor Seth Thompson, Town Manager Debbie Botchie, Town Code & Building Official Eric Evans, and GMB Representative Andrew Lyons Jr. Town Clerk Matt Amerling was absent.

**1. CALL MEETING TO ORDER**

Mayor Bob Gordon called the meeting to order at 7:00 p.m.

**2. PLEDGE OF ALLEGIANCE TO THE FLAG**

**3. ROLL CALL**

Mayor Gordon stated everyone was present except Town Clerk Matt Amerling.

**4. ADOPTION OF TOWN COUNCIL MINUTES AND NOTES**

**A.** Adoption of Town Council Minutes – March 12, 2019

**B.** Adoption of Town Council Workshop Minutes – March 26, 2019

Council Member Sharon Brienza motioned to adopt the March 12, 2019, Town Council minutes, and the March 26, 2019, Town Council Workshop minutes. Secretary Ron Belinko seconded the motion. Motion carried 5-0.

**5. FINANCIAL REPORT – Treasurer Peter Michel**

**A.** March 2019

Treasurer Peter Michel read the Financial Report for the month ending 3/31/19.

**March 31, 2019:**

General Revenue:   \$ 101,441.   Restricted Revenue:       \$ 41,223.

General Expenses:     46,566.   Restricted Expenses:       36,628.

**6. ADMINISTRATIVE MATTERS**

**A.** Administrative Report for January 2019 – Town Manager

Town Manager Debbie Botchie read the following press release: “Since January 2018, the Town of Millville Comprehensive Plan Committee and Town staff have been working on the ten year update to the 2008 Comprehensive Plan. The Town has partnered with Debbie Pfeil of KCI Technologies, Inc. to manage the New Plan from its inception thru community surveys, data collection, multiple meetings, intergovernmental coordination and State Certification from the Governor’s Office. The Town of Millville recently completed the Draft 2019 Comprehensive Plan Update and is seeking Public Comments. The Plan can be found on the Town’s website at the following link:

<https://millville.delaware.gov/info/comprehensive-plan-update/>.

The Plan has been reviewed by Sussex County and is scheduled for the Office of State Planning Coordination review with multiple State Agencies the end of April. The Public Comment period will be open from Monday, April 9, 2019 thru Tuesday, June 11, 2019. Please submit all comments in writing to Matt Amerling, Town Clerk, at [MAmerling@mvtown.com](mailto:MAmerling@mvtown.com) or they can be hand delivered to the Millville Town Hall. All received comments and recommended responses will be provided to the Mayor and Town Council during the Public Hearing on Tuesday, June 11, 2019 for consideration. The Town would like to thank everyone for the volume of responses to the Community surveys as this information assisted with shaping the Town's goals."

### **MOTION TO ENTER PUBLIC HEARING**

Ms. Brienza motioned to enter the public hearings at 7:10 p.m. Mr. Michel seconded the motion. Motion carried 5-0.

### **7. NEW BUSINESS**

**A. Public Hearing Notice – Secretary**

**B. Written Comments – Town Manager**

Ms. Botchie stated the Town received a letter from Chris Riportella, who resides at 17029 Bellevue Court in Bishop's Landing, which reads, "Good morning, Deborah. I hope you had a great weekend. I had the pleasure of speaking with you and Matt on March 22. At that time, you took the time to review the Millville Boardwalk and Town Park projects with me in detail, and were patient with every question I had. As a refresher, I am a part-time resident of Bishop's Landing. While you and I agreed on many benefits of the projects, we also note that not all my fellow residents feel the same way. I write to you today to pass along an overdue thank you for taking the time with me, but also to let you know I have had a couple conversations with a couple of my dissenting neighbors. I will continue to lend my support to these projects as well as the work you all do to continue to improve our community. I know you have your official channels of communication; however, if there is anything I can do in future to help support you in your efforts, please let me know. Thanks."

**C. Discuss a final site plan submitted by Millville Boardwalk LLC, for an indoor/outdoor amusement establishment located on TMP #134-12.00-35.00, 35291 Atlantic Avenue, zoned C-1. The applicant plans to include in the establishment an 18-hole miniature golf course, a creamery/ice cream parlor, retail shops, and future indoor amusement. At its February 1, 2019, meeting, the Town Planning & Zoning Committee voted 3-0 to recommend Town Council to approve the site plan to include the parking in the front as proposed, to include the twenty-two (22)-foot wide drive aisles in the back, signage details and what was discussed with the other recommendations.**

Mr. Robert Witsil stated he is the attorney here on behalf of Michael and Zach

McCarthy, and Joe Garner, the members of Millville Boardwalk LLC. Mr. Witsil stated tonight's meeting is a site plan review and is not a decision as to whether the type of use of the property is appropriate or not; but the applicants are submitting the site plan with all approved permitted uses in the C-1 district. Mr. Witsil stated the Town's Planning & Zoning (P&Z) Committee reviewed the plan on February 1 and, after asking extensive questions as well as receiving a letter of no contention from DelDOT, and approvals from Sussex Conservation District (SCD) and the State Fire Marshal, recommended the plan to Council for approval. Mr. Witsil stated this is not a hearing about rezoning, it's not a variance, it's not a conditional use application, and all of the uses put on tonight's plan are permitted. Mr. Witsil stated the plan only deals with four (4) acres of a twenty (20)-acre parcel, and the four (4) acres is along Route 26 and the setback from the roadway is eighty-two (82) feet in distance. Mr. Witsil stated there is a vegetative and sand decorated berm of approximately three (3) to four (4) feet which rises from the edge of the right-of-way of Route 26 and falls back to the parking lot. Mr. Witsil stated the parking lot has twenty-seven (27) parking spots and the Town has some suggestion the parking spots should be in the rear of the building; however, the parking lot will act as a safety buffer for children who are in the miniature golf area and in the retail area. Mr. Witsil further stated the parking in the front creates a setback from the noise and light which may come from the miniature golf course. Mr. Witsil stated all State agencies have signed off on this application, water will be supplied by Tidewater, the sewer is with Sussex County, and there are facilities on site to deal with expectant human traffic. Mr. Witsil stated the size of the miniature golf is nineteen-hundred (1900) square feet and the deckway is seven-hundred-eighty (780) square feet. Mr. Witsil stated the Town P&Z and the Town's engineer, Mr. Andrew Lyons Jr., were concerned about lighting but the location will be downlit with very little light pollution. Mr. Witsil stated at the rear of the property is the existing building on the plan is the blue pole building which stands now, and, if approved, it will be repainted and there is no immediate use for the building as of yet, but it will most likely be an amusement center and the applicant will not allow alcoholic beverages to be served or brought onto the premises. Mr. Witsil stated there will be no area where people can come in and park after-hours to drink alcohol as it will be policed by the applicants.

Mr. Witsil stated in addition to the eighty-two (82)-foot front yard setback, the applicant complies with all Town setbacks, and the applicant even has twenty-plus (20+) feet sideyard setbacks, which is plenty based on the Town's required fifteen (15) feet. Mr. Witsil stated there is approximately one-hundred (100) feet of drive as a person enters, before they go into the parking lot, and that is ample room for traffic to come in and get out of the flow of traffic on Route 26, be it a left- or right-hand turn and cars won't be "stacked up" in the parking lot, looking for a parking space. Mr. Witsil stated one condition which has not be addressed on the site plan, and Mr. Witsil asks Council to consider approving is, because the applicant doesn't have an immediate future proposed use for the building in the back, to have the applicant designate a line where the applicant doesn't have to install the driveway and the rear parking until the applicant utilizes the rear building, which Mr. Witsil believes will be soon because he believes the applicant is eager to get the building fixed up and

occupied. Mr. Witsil stated all structures are well below the Town's maximum height of forty-two (42) feet, the maximum lot coverage does not exceed the sixty percent (60%) rule, the applicant has adequate and sufficient off-street parking for the uses the applicant anticipates, and this is a less dense use than anything else that's been brought to Town to date and this minimizes density. Mr. Witsil stated the hours of operation plan on being 7:00 a.m. for serving coffee in the morning, and the hours of the miniature golf operation and the other indoor amusements will be from 10:00 a.m. to 11:00 p.m. Mr. Witsil stated the applicants do not want this to cause any problems for the neighbors or to the Town, and the applicants will be policing the property twenty-four (24) hours a day. Mr. Witsil further stated the applicant knows of the Town's noise ordinance and Delaware State Police (DSP) can always be called in if need be but the applicant would be very responsive and receptive to any warning or violation the Town incurs. Mr. Witsil stated DelDOT has not requested any traffic impact study as DelDOT feels this is not significant enough to require such a study. Mr. Witsil stated no one likes traffic but this project will not bring any extra traffic, but rather just bring out the people who reside and visit the Town already. Mr. Witsil stated this application is permitted and whether or not someone doesn't like ice cream, coffee and/or miniature golf, that is not a basis for approving this application. Mr. Witsil stated the job tonight is to determine whether the site plan adheres to the Town's Code, which the Town's P&Z has already reviewed and recommended for approval.

Mr. Michael McCarthy, of Millville Boardwalk LLC, stated he would like to thank Council, all of the people in attendance tonight, and God for this opportunity to present this project tonight. Mr. McCarthy stated he also wants to thank the Town's P&Z to help him create this outstanding use of open space. Mr. McCarthy stated he and his family believe the Millville Boardwalk is truly needed in this local community as a place for people to gather and enjoy time with their friends and family. Mr. McCarthy stated his family wants this place to be a fun for all generations of the community – from the grandparents to their kids and down to their kids' kids, and even for great-grandparents. Mr. McCarthy stated this is a place for everyone to enjoy a fun round of golf and time with their family; and they would like to bring the feel of the boardwalk to Millville so everyone in Town can enjoy the amenities in a safe, family-friendly environment without the hassle of a busy town. Mr. McCarthy stated his family's goal throughout the Millville Boardwalk is to be a new part of the community through fundraising events, birthday parties and anniversaries. Mr. McCarthy further stated he has received over one-hundred (100) local signatures on a petition in favor of the Boardwalk, and he and his family will uphold the "spirit of the quiet resort."

Mr. McCarthy stated Ms. Debbie Chorman has done such a fantastic job at the design of this project, and, working with the Town's P&Z, Mr. McCarthy and his family have made sure to follow the Town's Development Design Standards and Guidelines; and, with P&Z's help, Mr. McCarthy and his co-applicants have made, what they feel, is the best site plan possible, with a view from the road of plants and trees along the berm to help separate the road from the parking area. Mr. McCarthy stated he feels their vision fits in the Town's ten (10)-year Comprehensive Plan and land-use plan as

this brings a different kind of commercial entity to Route 26. Mr. McCarthy stated Millville Boardwalk will consist of a thirty (30)-foot-tall lighthouse which will house the operation of the Lighthouse Beach Golf. Mr. McCarthy stated there will be an ice cream concession area where families can enjoy snacks and treats. Mr. McCarthy stated the building will be elevated up several feet above ground with a twelve (12)-foot-wide boardwalk, and there will be a fenced-in family area. Mr. McCarthy stated they have addressed the P&Z concerns with fencing by adding gates in the rear and the side of the golf course, which will allow for emergency services to enter and exit if necessary. Mr. McCarthy stated they have shown Council the detailed plans for the trash enclosure and the fencing. Mr. McCarthy further stated they have discussed the public comments which arose during the P&Z meeting, and the neighbors who are located in the C-1 mixed use districts expressed some concern about the activities and the business, but, being in the C-1 mixed-use districts, the neighbors must assume a certain level of nuisance with regular business operations. Mr. McCarthy stated he and his family will comply with all the Town ordinances, including no business activities during the sleep hours, with the hours of operation being from 7:00 a.m. to 11:00 p.m.

Mr. Joe Garner, of Millville Boardwalk, stated he will be speaking about the miniature golf portion, and when they were researching the miniature golf, they not only stopped at some of the local golf courses but actually went up and down the eastern shore to take a look at what everyone else has and figured out what they liked and disliked about every course. Mr. Garner stated they noticed the courses in the area cater to vacationers and they open up just before Memorial Day and close just after Labor Day, not allowing the local community a chance to use their facilities and enjoy them when it's not incredibly busy. Mr. Garner stated what Lighthouse Beach Golf is going to do is open up earlier in the season, in the spring, and stay open later into the fall and try to be open for the local community. Mr. Garner stated they plan to offer a locals discount where a person would show their local identification (ID) to get a discounted rate to play golf and the Boardwalk also plans to offer group rates and fundraising opportunities not only for local businesses but for organizations, communities, and clubs. Mr. Garner stated the Boardwalk can either donate back some of the proceeds from the night (just like Dine and Donate), or there can be discounted rates to play a tournament with their company/group. Mr. Garner stated after contacting several miniature golf-specific builders, Mr. Garner and company decided to go with the number one (1)-rated builder in the country: the Harris Group, who've not only built courses in the United States, but also in Mexico, Canada, Central America, and in Europe; and they have a lot of knowledge on what it takes to create an excellent golf course. Mr. Garner stated the Harris Group took what Millville Boardwalk wanted and not only created a fun course but also a challenging course, which will keep players returning, with trick shots, long shots and ample space. Mr. Garner stated they didn't want people "piled up on top of each other," waiting for the next group to move, so there will be ample space between holes so the next group of golfers can wait while the golfers on the green can enjoy their round of golf. Mr. Garner stated each time you play the Lighthouse Beach Golf course, you'll find a new way to play a hole, you'll better your score, and you'll keep coming back time and time again. Mr. Garner stated the theme of the golf course is the Delaware

beaches, which commemorates the natural beauty, using a local landscape to incorporate indigenous plants in the course and around the property, which will add to the ambiance, and many of the holes will have replicas and decorations showcasing surf-fishing, the inlet, the local beaches, boating, crabbing and surfing. Mr. Garner stated the lighting will be included with the course and there will be lights hung from natural wood posts, similar to pier pilings, with the lights being shielded, soft, downward facing the course, the family area and the parking areas. Mr. Garner stated the shielded lights have a “dark night certification” to keep the light pollution as low as possible and have a low impact off the property.

Mr. Zach McCarthy, of Millville Boardwalk, stated they settled on the name Agape for their creamery because, first and foremost, it is a Christian term referring to the highest form of love and charity, a selfless and unconditional love for your fellow man, and the Millville Boardwalk’s mission is to make a positive impact on everyone who steps through their doors and to make sure everyone leaves happier than when they entered. Mr. McCarthy stated Agape also was chosen for its other meaning of “to have one’s mouth open, especially with surprise and wonder,” and their motto will be “a taste of love.” Mr. McCarthy stated they will be making a small batch of sixteen (16) flavors with rotating flavors prepared onsite. Mr. McCarthy showed the audience where the kitchen will be as well as a seating area both inside and outside for patrons. Mr. McCarthy stated his mother and grandparents had the bakery business Just Desserts and they’re hoping to “get into the Just Desserts recipe vault and bring out some favorites” to make and sell again, as well as giving back to the community with fundraising events, the first of which will have the working name “First Responders Cookies n’ Cream Classic,” which will give first responders and their families a day to enjoy on the links and create a special ice cream flavor, with some proceeds going to the fire department. Mr. McCarthy stated the Town has experienced tremendous growth over the past ten (10) years and we must make a decision now to make a community of neighbors, not strangers, and this requires building one-on-one relationships with one another. Mr. McCarthy stated it is their hope Millville Boardwalk will serve as a meeting place for people to grow and build and nurture these relationships.

Town Solicitor Seth Thompson asked about the hours of operation, confirming the coffee would open at 7 a.m., and the golf and ice cream would start at 10 a.m. and go until 11 p.m. Mr. Witsil stated yes. Mr. Zach McCarthy stated those would be the hours during the summer season. Mr. Thompson asked Mr. Andrew Lyons Jr., of GMB, if the request to stub off the parking in the rear would be an issue. Mr. Lyons stated no, but he would extend it to where the end of the golf course is located so emergency personnel can get back there. Mr. Thompson stated if this is approved, and the applicant wants to later develop the back portion of the property, the applicant will go through the process for a certificate of completion. Treasurer Peter Michel asked what will be done with all of the buses coming to the business, and where will they park. Mr. Garner stated they have designated a space on the east side of the drive back to the existing building as overflow parking so there should be ample parking for a bus or extra cars. Mr. Michel asked, regarding the music playing, will the speakers be placed high up or low. Mr. Garner stated there will be a light background music

playing, which will come from the light poles, no more than ten (10) feet above the ground and it will only be for the golf space and not the parking area, with the first speaker being two-hundred (200) feet off the road. Mr. Michel asked with the one way in and one way out entrance and exit, is the applicant thinking of a right turn only? Mr. McCarthy stated no. Mr. Michel stated he knows it is not required by DelDOT but it will be busy. Mr. McCarthy stated since 1999, with McCarthy Stones (which also is along Route 26), Mr. McCarthy has dealt with one entrance forty (40) feet wide and there are eighteen (18)-wheel tractor trailers, dump trucks and other large trucks coming in and out, and in that entire time, they have never had one accident in the front of the business on Route 26.

Mayor Bob Gordon stated this is the first year Route 26 has had a center lane and it allows more for passing and the emergency services vehicles, and there are quite a few motorists who use that center lane as a passing lane. Mayor Gordon stated because of where the business sits, he's afraid someone will make a left turn out of the establishment and someone will get "t-boned" trying to come out because traffic is getting worse, not better. Mayor Gordon stated he knows DelDOT is not concerned about the entrance other than having enough room to get through, but people who are on vacation seem to forget the rules. Secretary Ronald Belinko stated this is a great plan and it's great for the community, but he has a concern with people riding their bikes and pedestrians crossing the street on such a busy road with fast vehicles. Mr. Belinko stated his other concern is with special events and making sure young people are secure during events with these amusement sections. Mr. Garner stated as the events comes to fruition, they will keep in mind whether there will be one (1) or two (2) security guards needed onsite. Mr. Belinko stated we also need to keep in mind with people crossing Route 26 because this business will be in walking or biking distance from some residences. Mr. Garner stated they would love to see some thoroughway to cross Route 26. Deputy Mayor Steve Maneri asked whether the light in the lighthouse top will be a beam light or a regular light. Mr. McCarthy stated it's just going to be a minor light and won't be a strobe light, spotlight or anything like that. Mr. Maneri asked the applicants if they thought about putting the music speakers lower to the ground so the music doesn't spread more. Mr. Garner stated their only concern with that is because it's a public area, a child or many kids could end up kicking the speakers and breaking them, but they are interested and may consider putting the speakers eight (8) feet high instead of ten (10). Mr. Maneri asked if they will be installing security cameras. Mr. Garner stated yes. Council Member Sharon Brienza stated her two (2) concerns of the lighting and the music have been addressed. Mr. Thompson stated he thinks it's important the applicant planned the long entranceway so someone turning in to the property won't be sitting in the road long while someone on the property is waiting to park.

Mayor Gordon asked if the lighthouse is thirty-eight (38) feet or thirty (30) feet. Mr. Witsil stated it is thirty-eight (38) feet high. Mayor Gordon asked if they would consider changing their business hours of operation because, living on Route 26, at night, it's "dead" and the only places open at 9 p.m. are bars and grocery stores during the summer. Mr. McCarthy stated he understands and is a firm believer in "nothing good happens after midnight," but during the summer season, which is the only time

the business will be open until 11 p.m., the crowds are still around and if the Boardwalk notices the crowds aren't coming at 10 p.m., then they can close at 10 p.m. instead of 11 p.m. Mayor Gordon asked if a bus of people come in at 11 p.m. to play golf, can they play through until 1 a.m. or later? Mr. Witsil stated the applicant can make a condition to not take any customers after 10 p.m. and the customers will have to be off the premises by 11 p.m.

Mr. Lyons stated the parking in the front as well as the widening of the lanes were recommended by the Town P&Z for Council to approve. Mr. Lyons stated per the Millville Development Standards, sidewalks shall be provided along the street front on both sides of Route 26 and Route 17. Mr. Lyons stated the DelDOT project completed did not install sidewalks in this area and there are not sidewalks contiguous to this parcel on either side of the property, so it was recommended to Council to waive that requirement. Ms. Botchie stated, regarding the parking, due to the set-up of this area, Ms. Botchie feels the parking is best in the front of the building so it's safe for people to enter the miniature golf; otherwise, you would have a parking lot with moving vehicles between the check-in building and the golf course where kids are running and playing. Mayor Gordon stated the sign mock-up is not up for sign approval tonight, but will have to be approved through usual Town procedures and procurement.

#### **D. Residents/Property Owner Comments & Questions**

Mr. Ron Graham, of Millville by the Sea, stated he wanted the applicant to address what they envision as what other retail shops will be in this complex and whether the ice cream shop and other shops will be open all year; and does the applicant own the remaining sixteen (16) acres and are those acres zoned as C-1?

Ms. Valerie Faden, of Beach Plum Drive, stated her concerns are the balancing of the economic development with the public health and safety issues; Ms. Faden likes the idea but has concerns about traffic congestion and entrance and egress. Ms. Faden stated if the applicant does own the tract, it may be possible to not have the entrance on Route 26. Ms. Faden stated the other issue is with the parking lot and while she doesn't know what the maximum capacity is, if the applicant is having a great season, twenty-seven (27) parking spaces may not be enough, and would urge Council to know what the other use toward the back will be; and would like to know what kind of data was used to determine who will be utilizing this business the most. Ms. Faden stated she also would like to see what, if any, environmentally-friendly material, including solar panels, would be used as she would like to see it incorporated into this plan.

Mr. Frank Vigna, of Coventry, stated he has been here about twenty (20) years and Mr. McCarthy has been an asset to the community, always helpful, and he sees no problem trusting him with this plan. Mr. Vigna stated he likes to see when a Christian owner takes over and stewards his own business.

Mr. Chris Ludlow, of Millville by the Sea, stated he encourages Council to approve the project as it's an excellent, off-beach facility which will work good for all locals



and not just those in the summertime.

Ms. Holly Wingate, of Creekside, stated she is here to show support for the project; she's known the McCarthy family and Mr. Garner for many years. Ms. Wingate stated having something like this here would be a wonderful addition to Town, and she can't imagine any town having too many ice cream shops.

Ms. Carly Perry, of Frankford, stated she is also a small business owner in the area, grew up here, and the area has gone from, if you wanted something, you had to drive to Salisbury, to now having all of these incredible locally-owned small businesses, and Ms. Perry thinks if these places were around when she was growing up, it would have been so neat. Ms. Perry stated she's here to offer her support because she has a small child and would love to have a place like this for her child and others.

Ms. Pam Smith, of Peppers Corner Road, stated she is also here to offer her support and she knows there are a lot of concerns about traffic, security, noise, light pollution, but Ms. Smith knows this family is all about security, safety, family, and being considerate of others.

Mr. Jerry Edwards, of Beacon Baptist Church, stated he is proud that Millville is responding to such a plan as this, and everyone here tonight has said what he feels. Mr. Edwards stated he is happy that this applicant is not requesting a liquor license.

Mr. Witsil stated his thanks to everyone who spoke tonight and show their support. Mr. Witsil stated, with regards to Mr. Graham's questions, Millville Boardwalk has no plans for the other sixteen (16) acres, but if the applicant did decide to do something with that land, they would have to come back and apply for those acres with the Town and have another meeting. Mr. Witsil stated there are no plans for other retail or food sales in the existing pole building other than an indoor amusement such as laser tag, golf, etc. Mr. Garner stated the only option would be if there were an extension of the ice cream shop up front and placing a second selling point within the building. Mr. Witsil stated the applicant plans on staying open year-round as best as they can, and it will be according to their business plan.

Mr. Witsil stated he knows there are concerns about traffic congestion but the applicant cannot control such a thing, and if DelDOT puts a walkway across Route 26, the applicant will be supportive; but the applicant cannot control Route 26 traffic. Mr. Witsil stated, in terms of parking, the Town does not provide a parking space per customer for a miniature golf course so the applicant and Town administration looked at other town codes where there is one parking space for every hole. Mr. Witsil stated he can assure his clients are looking forward to rapid, good business, and as soon as they find the parking is not enough, parking will be extended to the back where it can be stoned or shelled. Mr. Witsil further stated, with regard to environmental concerns, the applicant would love to have solar lights but they are not that efficient and require panels, which would have to be on the south and west sides of the building; and those panels are not attractive and are terribly expensive. Mr. Witsil stated if the time comes when his clients can afford it, such an avenue is a business decision they'll consider. Mr. Witsil stated, in terms of another entrance other than off Route 26, there would

have to be an entrance off another parcel, which the applicant doesn't own. Mr. McCarthy stated they are not blacktopping any of this and most driving surfaces will be permeable, plus there's a lot of green space on this site plan. Mr. McCarthy stated with regards to who will be using the business and what survey was taken, the goal of this business is not just for the vacationers to patronize this business but also for the local community members and their families. Mr. Belinko asked what the timeframe is on starting this project. Mr. McCarthy stated he'd like to get a building permit tomorrow if he can.

Mr. Thompson stated the conditions with this application would be stubbing the road toward the back of the miniature golf course; the hours of operation would be for coffee to be served at 7 a.m., with the ice cream and miniature golf operating between 10 a.m. and 11 p.m., but no new miniature golf customers after 10 p.m.; having the speakers at eight (8) feet off the ground; and the light plan as described tonight.

### **MOTION TO CLOSE PUBLIC HEARING**

Ms. Brienza motioned to close the public hearings at 8:30 p.m. Mr. Michel seconded the motion. Motion carried 5-0.

### **8. NEW BUSINESS**

- A.** Review and possible vote on a final site plan submitted by Millville Boardwalk LLC, for an indoor/outdoor amusement establishment located on TMP #134-12.00-35.00, 35291 Atlantic Avenue, zoned C-1.

- Mayor Gordon requests individual vote

Mr. Belinko motioned to approve the final site plan with the conditions of parking allowed in the front, no sidewalks in front of the business along Route 26, stubbing the road toward the back of the miniature golf course; the hours of operation would be for coffee to be served at 7 a.m., with the ice cream and miniature golf operating between 10 a.m. and 11 p.m., but no new miniature golf customers after 10 p.m.; having the speakers at eight (8) feet off the ground; and the light plan as described tonight. Mr. Maneri seconded the motion. Mr. Maneri voted yes. Mr. Belinko voted yes. Ms. Brienza voted yes. Mr. Michel voted yes. Mayor Gordon voted yes. Motion carried 5-0.

- B.** Discuss and possible vote on Resolution 19-06. A Resolution to approve the transfer of improvements from Millville Town Center, LLC, the developer of Millville by the Sea and of Sand Dollar Village I, to the Millville by the Sea Property Owners Association. Performance bond #SU5023783 prepared by Arch Insurance Company was released in its entirety by the Town Council on November 10, 2014. The developer is required to have in place a warranty bond in the amount of \$202,687.50.

Mr. Thompson stated in terms of the turnover required under the Delaware Uniform Common Interest Ownership Act (DUCIOA), that is not what the Town is doing tonight. Mr. Thompson stated part of the public works agreement for the various phases is that the developer has to show they substantially completed in a work-like

manner the improvements which have been bonded, and those bonds protect the Town so if something isn't done, the Town has a potential recourse. Mr. Thompson stated when the work is done and been inspected, the Town is to vote on a resolution to release that bond and a one (1)-year warranty bond goes into place.

GMB Representative Andrew Lyons Jr. stated with regard to this resolution with Sand Dollar Village I, that section was constructed a number of years ago, and it's been walked and inspected by the Town engineer when it was done and since then. Mr. Lyons stated it has been walked numerous times by the Town throughout that time, with fixes done in 2013. Mr. Lyons stated he has walked the section, looking for substantial repairs which need to be done, and, according to the public works agreement signed by the developer and the Town, one of the issues is normal wear and tear which is to be expected. Mr. Lyons stated in Village I especially, normal wear and tear comes into play because of the age of the development, which was started over twelve (12) years ago. Mr. Lyons stated there was some of that criteria when looking at the improvements put in, and he and Town Code & Building Official Eric Evans walked the community with the developer, noting to the developer all of the improvements which the Town believe needed to be made. Mr. Lyons stated the developer has completed those corrections. Mr. Lyons further stated the Town has received a list from concerned citizens, the Town has reviewed the list, going out and examining all of the concerns listed. Mr. Lyons stated one of the concerns was spalled concrete on sidewalks and a lot of it is happening in driveways, but this is not the developers' issue because it's not substantially by the material failing, it's not a bad mix, but it's usually because of salt or a de-icing agent which can come off the cars and falls onto the driveways and sidewalks. Mr. Lyons stated this same issue does carry over to other villages in the community but right now, he's discussing Sand Dollar I. Mr. Lyons stated with DelDOT brining the roads before a proposed snowstorm, the salt and sand gets into the tires and carries to people's driveways and sidewalks, so this happens in a lot of places.

Mr. Lyons stated there is another mention of the silk sacks in the catch basins, which are at the end from Village I to where Sea Star is located, and they are in there because Sea Star is still under construction and the Town cannot require those sacks from being removed because they are soil control measures which have to be approved for removal by the Soil Conservation District (SCD); so the sacks will stay until Sea Star is completed. Mr. Lyons stated another issue listed was the street being pitched the wrong way so they're not drained properly from the alleys. Mr. Lyons stated this issue is per the plan of the community as they are pitched to the center and the standard is having standing water with such an item from twenty-four (24) to forty-eight (48) hours with new construction, so this is not an issue which needs to be corrected. Mr. Lyons stated with regards to the cracked sidewalks, there were a few places where those cracks in Village I were corrected, which is where the sidewalk is separated. Mr. Lyons stated a hair-line crack would be – because of the age – considered normal wear and tear because concrete cracks and it's been many years since it was installed. Mr. Lyons stated the Town will be doing a maintenance warranty walk-through hopefully in about eleven (11) months from now to give the contractor and developer time to do

any needed repairs. Mr. Lyons stated if the concrete moves, separates or comes up or down to cause a tripping hazard, it will be a different issue. Mr. Lyons stated everything will be reviewed again come the end of the one (1)-year warranty. Mr. Lyons stated all of the other smaller issues are considered normal wear and tear. Mr. Lyons stated the maintenance bond for this is two-hundred-two-thousand dollars (\$202,000.00) so there is more than a substantial bond amount for any necessary repairs. Mr. Lyons stated for a village the age it is, Village I is in very good shape, the streets are in great condition.

Mr. Steve McCully, of Reservoir Road, asked what kind of action is being discussed tonight for the Village. Mr. Thompson stated there are two (2) different actions, one of which Council approving the release of the performance bond, of which there is a difference between that and a maintenance bond. Mr. Thompson stated the performance bond is designed to cover the cost of actually building the items, so the Town requires one-hundred-twenty-five percent (125%) of the proposed construction costs as the performance bond. Mr. Thompson stated the maintenance bond is ten percent (10%) of the cost for one (1) year, so the notion is the items have to be built and they need to be maintained for at least one (1) year under that maintenance bond. Mr. Thompson stated the other action to the resolutions tonight is approving the turnover so basically deeding the improvements to the homeowners' association (HOA).

Mr. Stan Piesla, of Tybee Street, stated he was one of the people who submitted items for review, and one of them was about the sewer plate starting to cave in before the curb started to rise toward the mound box. Mr. Lyons stated the Town did look at that item and it's not a cave-in but the sewer manhole is very close to the curb in order to get the plothole compaction there of the asphalt itself. Mr. Lyons stated because of the age and the condition of the location, this is not an item for the developer.

Mr. Steve Russ, of Parkview Street, stated the agenda states the bond was released in November 2014. Mr. Thompson stated it could have been inspected at that point so the performance bond could've been released but they wouldn't have given the Town a warranty bond. Mr. Russ asked if the bond was released in 2014, is the warranty bond still in place? Mr. Thompson stated the warranty bond would be in place today and it would be good for one (1) year from today if approved. Ms. Botchie stated Council released the bond in 2014 because the work was complete but there was a balance of thirty-thousand dollars (\$30,000.00) which was in reserve. Mr. Michel asked if the punchlist for Village I was completed. Mr. Lyons stated yes.

Mayor Gordon motioned to approve Resolution 19-06. Mr. Michel seconded the motion. Mr. Maneri and Ms. Brienza abstained from the vote. Motion carried 3-0-2 abstentions.

- C. Discuss and possible vote on Resolution 19-07. A Resolution to release performance bond #PB03010400588 prepared by Philadelphia Insurance Company, in the amount of \$1,638,661.00 in the name of Millville Town Center, LLC, the developer of Millville

by the Sea and of Sand Dollar Village II. The developer is required to have in place a warranty bond in the amount of \$163,866.10. The Resolution will also approve the transfer of improvements to the Millville by the Sea Property Owners Association.

Mr. Lyons stated the punchlist for Sand Dollar Village II was completed, and Village II is slightly different in terms of the age of the village and the normal wear and tear does not have the same affect; therefore, there were a few more repairs on the list and those were all taken care of. Mr. Lyons stated there is a landscape agreement for Village II as well as for the subsequent villages of Summerwind and Lakeside. Mr. Lyons stated the Town has done a walk-through to find the trees which aren't there but were there at the time and have identified those. Mr. Lyons stated they will do another walk-through with a State arborist this summer once everything is in bloom to check on what is alive, what isn't alive, and see what may need or not need to be replaced. Mr. Lyons stated the landscape issues are taken care of through a separate agreement and not the bonds.

An audience member asked if this is a warranty bond which covers deficiencies and is not a bond which covers maintenance. Mr. Thompson stated this is a warranty bond with which they're warranting the bond for that year. The audience member asked if it's used to cover normal maintenance. Mr. Thompson stated no. Mr. Maneri and Ms. Brienza abstained from the vote.

Mr. Michel motioned to approve Resolution 19-07. Mayor Gordon seconded the motion. Mr. Maneri and Ms. Brienza abstained from the vote. Motion carried 3-0-2 abstentions.

- D.** Discuss and possible vote on Resolution 19-08. A Resolution to release performance bond #PB03010401438 prepared by Philadelphia Insurance Company, in the amount of \$1,002,217.00, in the name of Millville Town Center, LLC, the developer of Millville by the Sea and of Summerwind Village, and performance bond #PB03010401215 in the amount of \$134,418.00, in the name of Millville Town Center, LLC, the developer of Millville by the Sea and of Summerwind Village-Model Homes Sea Scape Court. The developer is required to have in place a warranty bond in the amount of \$100,221.70 for Summerwind Village, and a warranty bond in the amount of \$13,441.80 for Summerwind Village-Model Homes Sea Scape Court.

Mr. Lyons stated all punchlist items were addressed, and there were some items brought to the Town's attention by the HOA which were also addressed.

Mr. Chris Ludlow, of Pembroke Lane, asked in item B there is a resolution "to approve the transfer of improvements" but that's not listed in the other items. Mr. Thompson stated all of the actual resolutions have the transfer language in them and the agenda items doesn't have such detail but the Town will make sure the resolution reflects on the agenda from now on.

Ms. Pam Montgomery, of Summerwind Village, asked if the air condition units for Summerwind Village are still under Miller & Smith, because she was told that and

when she asked what happens after the five (5)-year compressor coverage for the homeowners, she was told they're all listed under Miller & Smith. Mr. Thompson stated this is an example of the Town's involvement doesn't extend to individual items with a home, but rather the Town only is involved with the improvements such as streets, sidewalks, etc.

Mr. Chris Buteas, of Shorebreak Crossing, stated with regard to the landscape agreement, when the State arborist will walk the village, if a bush or tree is more than twenty-five percent (25%) dead, it's his understanding it has to be replaced. Mr. Thompson stated that would be in the landscape agreement, and Mr. Thompson thinks it's fifty percent (50%) but the Town can check and get back to Mr. Buteas.

Ms. Pat Guilday, of Stone Lane, asked regarding the landscape agreement, there is a lot of dead foliage because inappropriate things were planted for the locale, so how tight is the Town sticking to the landscape plan and will there be an appropriate re-planting? Mr. Thompson stated if the developer planted what was approved on the plan, the Town can't make them plant something else. Ms. Guilday asked if something will be planted which will die again because it's on the list. Mr. Thompson stated the Town would want the correct species planted and if something is planted and doesn't work, the Town and developer would agree to look into something which would survive. Mr. Buteas stated his thanks to Mr. Evans and Mr. Lyons for all of their hard work on this. Ms. Guilday stated with the landscaping agreement if that is between the Town and the developer. Ms. Botchie stated yes. Ms. Guilday stated now the HOA has responsibility for those areas which are being planted and does the HOA have input from the Town on what should be planted. Ms. Botchie stated the Town could take that into consideration, but the Town will see what the arborist says and Ms. Botchie thinks the developer won't have a problem with that aspect.

Mayor Gordon motioned to approve Resolution 19-08. Mr. Belinko seconded the motion. Mr. Maneri and Ms. Brienza abstained from the vote. Motion carried 3-0-2 abstentions.

- E.** Discuss and possible vote on Resolution 19-09. A Resolution to release performance bond #PB030110401439 prepared by Philadelphia Insurance Company, in the amount of \$428,670.00, in the name of Millville Town Center, LLC, the developer of Millville by the Sea and Summerwind Boulevard. The developer is required to have in place a warranty bond in the amount of \$42,867.00. The Resolution will also approve the transfer of Summerwind Boulevard to the Millville by the Sea Master Association.

Mr. Lyons stated this item was an extension of Summerwind Village so all punchlist items have been addressed. Mayor Gordon motioned to approve Resolution 19-09. Mr. Michel seconded the motion. Mr. Maneri and Ms. Brienza abstained from the vote. Motion carried 3-0-2 abstentions.

- F.** Discuss and possible vote on Resolution 19-10. A Resolution to release performance bond #PB03010401591 prepared by Philadelphia Insurance Company, in the amount of

\$662,876.00, in the name of Millville Town Center, LLC, the developer of Millville by the Sea and Lakeside Village. The developer is required to have in place a warranty bond in the amount of \$66,287.60. The Resolution will also approve the transfer of improvements to the Lakeside Village Home Owners Association.

Mr. Lyons stated all items identified on the punchlist have been addressed and there were some items brought to attention from the HOA, and some of those items have been taken care of, which was the cracked sidewalk items. Mr. Lyons stated some of the items were not part of the review for tonight because they were not in the right-of-way, and not part of the bonded improvements, and some of that is some of the drainage on some of the lots which go back to back. Mr. Lyons stated the drainage has been looked at a couple of times by the developer's engineer, the Town has been out there and seen there is fall – albeit not a lot – which does go back there; and the SCD has also been back there. Mr. Lyons stated unfortunately the drainage is not an issue for the bonded improvements. Mr. Lyons stated there were some stormwater areas behind lots 301 to 317, which sometimes shows some ponding water, which is preexisting to the development and shown on the actual approved plans that the draining swale there had ordinary high water, so there have always been substantially large ponds in that area. Mr. Lyons stated there was also mention of blacktop which is falling, that is on unconfined blacktop and anytime your vehicle runs off the road with blacktop that is not to Code, that will happen. Mr. Lyons stated this can be found a lot of times because asphalt is a very flexible material and most sections are curbed except for the referenced section, which is a part of the approved plan. Mr. Lyons stated with that section there is evidence of a vehicle going off the road, but it's more an issue of the material used and why there's not a curb there, but it's not put in wrong or defective.

An unidentified audience member stated it shouldn't have been put in in the first place. Mr. Lyons stated he cannot speculate on that aspect. The audience member stated cars do run off the road and incrementally it's going to keep moving in and moving in until it gets to the center of the street and then what will the Town do? Mr. Lyons stated he's not sure why it was that way, Mr. Lyons can assume it was for stormwater, to allow the road to drain off. The audience member stated it's all about money. Mr. Lyons stated with the SCD asks to take the curbing out anytime you have a pond close to the road so the water run-off can go through the grass area. Mr. Frank Parrino, of Pembroke Lane and a member of the HOA board, stated on the other side of that same pond, Sand Dollar Lake, there is the curb to stop it. Mr. Lyons stated he can only go by the approved plans. Mr. Parrino stated he understands but the design itself is at fault and since it is a part of the public right-of-way, shouldn't it be a part of the performance bond which the residents are requesting Council not to release at this time? Mr. Thompson stated he understands Mr. Parrino's point and appreciates the checklist his HOA provided to the Town, but if the developer builds to the design, the Town can't then say "I'm sorry, but what you built isn't going to be released even though it was built the way it was laid out." Mr. Parrino stated the Town approved the design and if the Town approved the design, wouldn't that have come up with the engineer at the time? Mr. Thompson stated Mr. Lyons was not the engineer at the time and yes, that would have been a subject of discussion when the plans were approved. Mr. Parrino

stated he's never heard of a place with a road where the blacktop ended where the grass began. Mr. Lyons stated there is a whole town – Henlopen Acres – where everything is that way and Mr. Lyons' company, GMB, does the blacktop mediation for and, every couple years, they have to do the edges again for the stormwater drain. Mr. Parrino stated his community is only made up of forty-five (45) homes and it's very expensive for them to have to worry about something like that so the residents are asking the bond not be released while this is being addressed. Mr. Parrino stated the concrete is another thing the Town reviewed, and Mr. Parrino walked through, seeing the guys did a great job with repairing the square panels, but there are panels which were left out. Mr. Parrino stated the worst one left out was at 27415 Clearview Circle. Mr. Lyons stated that is one of the severely scaled driveways and from the research GMB has done and testing which has been done in other areas, that is a scaling which is basically from vehicles or from chemicals being put on the driveway for de-icing. Mr. Parrino asked why the certain ones got so bad because he knows some neighbors didn't use salt. Mr. Lyons stated DelDOT is brining the roads and the chemicals from that brining do get on people's vehicles and on their tires and when it rains, it washes off onto the driveway. Mr. Lyons stated they do notice it's not on the other sides of the sidewalk and it's only on the driveway, so if all those sidewalks were poured at the same time, and if it's an issue with the concrete itself or the pouring job, the cracking would be throughout the entire section and would not be confined to just the driveway. Mr. Parrino stated from an engineering point of view, Mr. Parrino was there and for the rest of the strip of houses heading north from his house, the concrete was all poured after Mr. Parrino's concrete was poured, and because Mr. Parrino was a concrete worker, he knows there's curing and you have to come back after a few days to sprinkle water on it, which Mr. Parrino didn't see. Mr. Parrino further stated in New York, they had concrete sidewalks and driveways, and the city salted those a lot, and there was no scaling in the concrete. Mr. Lyons stated there are different mixes of concrete. Mr. Parrino asked if it's possible to see the report on the strength of materials or type of concrete the builder used. Mr. Lyons stated the standard used is by DelDOT and Mr. Lyons believes it is the four-thousand (4000) pounds per square inch (PSI) concrete. Mr. Parrino stated Mr. Lyons said he's seen this in a lot of other places, so Mr. Parrino thinks someone has to talk to DelDOT to let them know this scaling is happening.

Mr. Parrino stated, in terms of the landscaping, when the arborist comes, will they just look in Summerwind Village or in other MBTS villages as well? Ms. Botchie stated all of MBTS except Sand Dollar Village I, because, unfortunately, Village I does not have a landscaping agreement. Mr. Parrino stated everyone loves the trees but what will happen in ten (10) years because the residents aren't sure how the trees will grow. Ms. Botchie stated the Town will find out what trees are there and get an idea of how they'll grow because it is a general concern and it will get addressed. Ms. Elizabeth Parrino, of Pembroke Lane, asked who picked the trees which were planted. Ms. Botchie stated the developer presents to the Town with the landscaping agreement a list of trees which are shade trees recommended by the National Arborist association, and the Town doesn't know too much about trees or their growth patterns as the Town accepted the approval of the national association; however, the Town is now wiser and can move forward from here.



Ms. Fawn Morgan, of LDC Advisors, representing MBTS, asked for clarification of where the asphalt meets the grass. The audience stated Clearview Circle, as well as most sides of Pembroke Lane. Ms. Morgan stated the approval process of processing plans through the Town is not a “one-shot deal,” there is a lot of back-and-forth, and as Mr. Lyons pointed out, DNREC gets involved with some of that process where there is stormwater or a stormwater run-off issue. Ms. Morgan stated Sand Dollar Lake isn’t a lake but a stormwater collection facility and therefore is subject to a whole separate set of rules and regulations dealing with stormwater; and everyone may look at it in hindsight and say the design is deficient but, at the time, it was the design which was dictated to the developer for that area, so the developer designed to the standards and codes put in place. Ms. Morgan stated the request is to release the bond for the improvement which was made according to the plan and whether someone in hindsight thinks the design was inappropriate, that is a separate issue. Ms. Morgan stated it wasn’t the developer’s design but rather the design created in concert with a jurisdictional agency. Mr. Parrino stated some of the grassy land part between Clearview Circle, the pavement, and the path then the lake – some of it is not even so the stormwater can go into the lake and that will add to the breaking up of the blacktop.

Mr. Parrino asked who is responsible for the stormwater drainage ditches when an animal gets killed and falls into the tube which goes under the road. Town Code & Building Official Eric Evans stated that is a tax ditch and the Beaver Dam ditch is the U.S. Army Corps of Engineers and Charles Hudson is the president of the Beaver Dam tax ditch association, and that is who you contact for that issue. Mr. Parrino asked if the runoff of the water between the row of houses on Clearview and the row of houses on Pembroke is not a part of what was being reviewed. Mr. Lyons stated that is not a part of the bonded improvement, but it has been looked at and surveyed and there is fall from the drain, from the houses to the drain. Mr. Lyons stated he looked at it, as well as CA (the developer’s engineer), and Mr. Lyons has been in contact with the SCD, who has been out there and confirmed there is fall, and the SCD has not seen the issues with standing water which would have the grass dying in certain areas. Mr. Lyons stated there is a fence which was put along the center of the square so any impediments inside the center – especially where the slight slope is located – will slow down and hold back water, especially in a grass area such as that one. Mr. Parrino stated they need more drainage in that area and in terms of the fences, they were put right up to the end and it interrupts the flow.

Ms. Annette Batista, of Clearview Circle, stated she was the first house on Clearview and down by near the curb on the street, when her house was built, the builders were only working on Pembroke and she sat for almost a year before the development came around to her, and because their sump pump goes out to the back property, it was still wet back there so it has nothing to do with the fences. Ms. Batista stated there was ankle-deep water sitting in the back big sections of undeveloped property which had not been built upon yet. Ms. Botchie asked if Ms. Batista reported that issue. Ms. Batista stated she didn’t know she had to report it.

Ms. Jeanne Smith, of Pembroke Lane, stated she is a part of the thirteen (13) houses this issue affects and she had an independent inspection done and it says the standing water along the rear property suggests the need for grading refinement, and recommend redefining swales as needed to insure proper off-site drainage. Ms. Smith stated not only does this water come eight (8) feet up into their yard, but it does not go away in the forty-eight (48) hours; rather it stays five (5) to six (6) days, maybe longer. Ms. Smith stated there are also safety concerns with the water running over the sidewalks, not under, as in the winter, the water freezes and the sidewalks become slippery, as she has fallen on those sidewalks before. Ms. Smith stated she has reported this and has been told it's her fence or her patio, but she didn't have any of that and this was still going on. Ms. Morgan stated that would be a builder issue and not a developer issue as the developer is not responsible for the fine grading of the residential lots; but the developer deals with the public improvements, the streets, the sidewalks, and this is a builder issue. Ms. Morgan stated there was a similar issue in Summerwind Village, the developer inspected it, they identified where the problem was, Miller & Smith made the correction, and that was a problem because Miller & Smith had installed a fence which impeded the swale. Ms. Botchie asked if these were the properties where the Town had topography maps (topos) done. Mr. Evans stated this is the set of properties on Pembroke where, unfortunately, some people maintained their yard and taken over enough of the back to change the topography, other folks let the grass grow which it's supposed to be, other folks cleared the back. Ms. Botchie asked if this is the property where they cleared the berm and weren't supposed to. Mr. Evans stated the wetland buffer has been disturbed. Mr. Thompson stated the Town is familiar with these similar issues and Ms. Batista's and Ms. Smith's issues, unfortunately, frankly aren't a subject for the resolution tonight, but, in terms of seeking a resolution, the Town wants to hear from people and help them address those concerns. Mr. Thompson stated what the developer is responsible for, which is in tonight's resolution, is the improvements they'll put in the right-of-way. Mr. Thompson stated that is what the Town bonds and tonight's resolution is aimed at releasing those bonds because the developer has done those improvements. An audience member asked who the builder is and who is the developer. Mr. Evans stated Christopher Companies is the builder. Ms. Morgan stated Millville Town Center LLC is the developer. The audience member asked if the developer acquired the builder, isn't the developer responsible for guaranteeing the work. Mr. Thompson stated the way it works is the Town looks to the developer for certain improvements to be done, in terms of code compliance, but as far as who is party to the development agreement or the public works agreement, it's the Town and the developer. An audience member stated as Ms. Morgan said, this is a builder issue and tonight's resolution only pertains to "street phasing and that sort of thing," but aren't the sidewalks a part of that? Mr. Lyons stated there are walkways outside of the right-of-way but not sidewalks. Mr. Thompson stated this resolution does apply to the sidewalks and not the driveway apron. Mr. Lyons stated the concrete which was identified to be corrected has been corrected. An audience member asked if Mr. Lyons used the list the residents submitted via email. Mr. Lyons stated he used what he as the Town engineer reviewed as what can be corrected from the development agreement. Mr. Lyons stated there are concrete items which were not done and these are not items that the Town can go from the developers' agreement to the developer to

get fixed. An audience member stated the group of residents agreed to pay for and repair eight (8) sidewalks or driveways, and in the midst of doing that, there was a notification from the developer to cease and desist because the resident(s) were trespassing on developer's property. The audience member stated these driveways were dangerous to walk on and finished poorly, so it seems even the residents can't make a fix because it's the developer's property. Mr. Thompson stated when it comes to these issues, the Town needs to hear them, but the Town has to operate within the constraints of the public works agreement and the obligations the developer owes to the Town; and those may be different obligations than what the developer owes to someone who buys a house in the development. An audience member stated the sidewalks are a part of the resolution tonight and if those sidewalks weren't there, the Town would tell the developer to finish the sidewalks, and these sidewalks are defective so they need to be finished. Mr. Thompson stated it sounds like the Town administration and Town engineer have a different list in terms of what they felt was not in compliance and, therefore, needed to be on the punchlist. An audience member asked who's responsible for the walkways around the lake because they are very poorly graded and you can't use them for days after it's rained because it floods. Mr. Lyons stated those walkways are not bonded and are not a part of the resolution tonight.

Ms. Peg Ehrhardt, of Pembroke Lane, stated she knows we're not here to talk about builder issues but there seems to be a common theme here, we've heard Miller & Smith, and a resident can't get her HVAC fixed because nobody seems to be helping her. Ms. Ehrhardt stated she loves where she lives but her concern is the developers hired the builders, so where is the commitment on their part? Ms. Ehrhardt stated the residents are here tonight expressing concerns and it's not the developer's issue but the builder's issue; and the developer is still hiring those same builders so instead of the residents going after the builders, why can't the developer – on the residents' behalf – go after the builder for the grading, the HVAC, etc.? Mr. Thompson stated Ms. Ehrhardt brings up a good example of if, for instance, there was a defect common to all of the houses, the Town provides its certificate of occupancy (CO) and it does inspections, but those inspections and those COs are not meant to be warranties in terms of the product being as you contracted. Ms. Ehrhardt stated she understands and she's directing her comments more towards Ms. Morgan because this is the developer who will continue to make recommendations for approval or disapproval in terms of future development and Ms. Ehrhardt thinks the residents need more support from their developer in terms of helping residents get what they need from their builders. Mr. Thompson stated the Town also doesn't dictate what builders are used. Ms. Ehrhardt stated she understands, and asked what will happen over time if the water stands there for years where the ditch is located. Mr. Lyons stated, from looking at the approved plans, that was a pre-existing ditch there and there's a twenty (20)-foot buffer from the property lines basically to the other end of that ditch and the buffer is not to be tampered with or altered. Mr. Lyons stated the ditch was not to be de-graded and the Town told the developer it was supposed to stay the way it was, and there is standing water there in the ditch at times, which is pretty common in this area. Mr. Lyons stated he and Mr. Evans went back and walked it, and there have been changes which have happened since the buffer area was put in, and when that happens, it becomes an issue

but it's not an issue the Town can take to the developer because the changes were made by homeowners, such as mowing. Ms. Morgan stated DNREC told the developer they could not touch that buffer. Ms. Ehrhardt asked what she should not be doing in that area. Mr. Lyons stated that is a buffer area and the twenty (20) feet is not a part of anyone's property but is rather a part of the common area and it's to be a natural buffer. Ms. Ehrhardt asked if the ditch would come up over time so there is no longer a ditch there. Mr. Lyons stated it should stay in the natural condition it's currently in; but it may have to be cleaned out every once in a while.

Ms. Helen Juliano, of Pembroke Lane, stated the scaling is getting worse and Ms. Juliano asked what will most likely be done this evening. Mr. Thompson asked if not all of the items on the list of concerns submitted by the residents were on the punchlist. Mr. Lyons stated yes. Mr. Lyons stated the scaling in Lakeside, where they've seen it, is in the driveways, and is not on the sidewalks which are adjacent to the driveways. Mr. Lyons stated in that case, that is where the basis of a lot of the professional opinion that it is not a material issue with the concrete itself being defective, because you would see the scaling everywhere and not just in the driveways. Ms. Juliano stated she finds it hard to believe that in three (3) years there's been enough brining to already cause scaling to the concrete. Mr. Thompson stated taking what Mr. Lyons has said and applying it to the contract between the Town and the developer, the determination would have to be that the developer used accepted construction practices and the construction for the improvements within the right-of-way were done in a good and workman-like manner; and that is the standard which the Town has to apply and it's what the engineer applied in terms of figuring out what needed to be fixed and therefore needed to go on the punchlist.

Mr. Marvin Novick, of Pembroke Lane, stated if it's the brining from the roads, everyone should have the same scaling problems, so why isn't everyone having these problems? Mr. Lyons stated he could not answer that question, but he has talked to many people on this issue in his company and other companies so the issue can be reviewed. Mr. Lyons stated one thing they can look at in the future is to review the different concrete mixes that come in and look for something through DelDOT and their approve mixes to try and figure out what causes this issue. Mr. Lyons stated from all the resources he's been able to look through, with what was used, it was an approved mix.

An audience member stated everyone is concerned about this issue and Lakeside Village is only forty-five (45) houses, with Clearview Circle being a private road which has been given to the homeowners who are responsible for the maintenance of the road, and if it continues to erode, break away, crack because of uneven grading where the water does not go into the lake but stays pooled there by the road, under the road, and that is a huge expense for forty-five (45) homeowner to undertake. The audience member stated it is inappropriate to grant this release of a bond when this is a very serious issue which needs to be addressed. Ms. Botchie stated there is another walk-through which will take place because the warranty bond is in place. Mr. Parrino stated the residents present are requesting Council deny or table the resolution for

review tonight until the residents can continue to negotiate with the developer regarding what can be done with some of the issues mentioned tonight. Mr. Thompson stated from the Council's perspective, for the Council to not release someone's bond, Council would have to make the determination that it was not within generally accepted construction practices and was not done in a good and workman-like manner. Mr. Thompson stated the Town engineer is saying it's built to plan and Mr. Thompson realizes because it was built that way, the residents are having issues with it; but that doesn't necessarily mean it translates to not being built in a good and workman-like manner or to it being out of accepted construction practices. Mr. Thompson stated it sounds like there is an issue with design and the residents would rather there be a curb there. Mr. Parrino stated yes, but if the edge of a road is crumbling and the design is bad, it's not servicing what it was put in place to do. Ms. Morgan stated the bond in place will cover for all costs of Lakeside and is a much greater sum of money than whatever is required or what the Town engineer could determine, but the Town engineer said this was built to plan and was done in a workman-like manner, and that's all that can be expected of the developer, and these plans go through a multi-phase process with many agencies, working very closely with the Town engineer, and it was done according to design standards which were in place at the time.

Mr. Lyons stated there will be a warranty walk-through to look at that section in a year, so if that section deems necessary to be repaired at the time, it will be on the punchlist. An audience member asked what if the cost to repair is more than the bonded amount. Mr. Lyons stated it won't because the costs have been vetted for the area. Mr. Al Ruble, of MBTS, stated he will monitor that area for the next year and if he sees anything that's going faster than it should, he can go back to Ms. Morgan and let her know of the problem; and if repairs are needed, the money in the bond is more than adequate to do the repair.

Mayor Gordon motioned to approve Resolution 19-10 with the condition of Millville by the Sea's representative Mr. Al Ruble following up on what he stated tonight and the developer honoring it. Mr. Michel seconded the motion. Mr. Maneri and Ms. Brienza abstained from the vote. Motion carried 3-0-2 abstentions.

## **9. CITIZENS' PRIVILEGE**

There were no comments.

## **10. ANNOUNCEMENT OF NEXT MEETING - TOWN COUNCIL WORKSHOP MTG., APRIL 23, 2019, AT 7 P.M.**

## **11. ADJOURNMENT**

Ms. Brienza motioned to adjourn at 10:15 p.m. Mr. Michel seconded the motion. Motion carried 5-0.

Respectfully submitted,  
Matt Amerling, Town Clerk